

APPEAL NO. 030613
FILED APRIL 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 6, 2003. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes an injury to the thoracic area. The appellant (carrier) appeals and the claimant responds, urging affirmance.

DECISION

Affirmed.

Essentially, the carrier quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

In this case the carrier arranged for a court reporter to report and transcribe the hearing proceedings. After the carrier submitted its appeal, the claimant requested a copy of the CCH transcript¹ from the Chief Clerk of Proceedings of the Texas Workers' Compensation Commission (Commission) so that he would not be at a disadvantage in responding to the carrier's appeal. We do not see a response from the Commission to the claimant's request in our file. Even if there were some error in the lack of response by the Commission, it would be harmless error in light of the fact that the claimant prevailed on the disputed issue.

¹ Section 410.164 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.17 provides that a party may submit a written request to the Commission for a duplicate of the hearing transcript/audiotape.

The true corporate name of the insurance carrier is **AMERISURE MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CINDY GHALIBAS
7610 STEMMONS FREEWAY
DALLAS, TEXAS 75247.**

Roy L. Warren
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge